



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/530,218

09/29/2005

Wolfgang Markus

23246

1273

535 7590 11/13/2008

K.F. ROSS P.C.

5683 RIVERDALE AVENUE

SUITE 203 BOX 900

BRONX, NY 10471-0900

EXAMINER

LE, MARK T

ART UNIT

PAPER NUMBER

3617

MAIL DATE

DELIVERY MODE

11/13/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/530,218	Applicant(s) MARKUS, WOLFGANG	
	Examiner MARK T. LE	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-17, 21-25, 28 and 29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-17, 21-25, 28-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9/23/08 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/23/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is responsive to the amendments filed on September 23, 2008. Applicant's amendments and remarks have been carefully considered.
2. The disclosure is objected to because of the following problems: In the specification, reference numeral 2 at certain parts of the specification is referred to as a sleeper frame 2 (e.g. page 12, line 16 of the specification) and at other parts of the specification is referred to as concrete beam structure 2 (e.g. page 15, line 6 of the specification); and reference numeral 15 at certain parts of the specification is referred to as standard or conventional connecting means (15), and at other parts of the specification is referred to as ribbed plate (15) or rail fastening and rail support (15) or rail fastening points (15). Such inconsistencies are confusing. Applicant is suggested to again proofread and revise the specification.
3. In the specification, page 12, line 16, "sleeper frame s 2" is a typo. Correction is required.
4. The replacement sheets of drawings, filed September 23, 2008, have not been approved for entry because Applicant has not shown the changes in a marked-up copy of the drawings, and/or provide a clear description of what have been changed. If there is no change, then it should be so stated.
5. Since the replacement sheets of drawings have not been approved for entry, the previous objections to the instant drawings are again repeated. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the prefabricated parts being pre-curved,

as recited in instant claim 6; and the noise absorbing concrete layer, as recited in instant claim 14, must be shown or canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. Claims 2-6, 8-17 and 21-25 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear as to whether the reinforced-concrete prefabricated beam recited in claim 2 is the same beams recited in claim 1. Note also, in claim 2, line 4, "beam" should be changed to read -- beams -- because claim 2 defines two beams.

Claim 3 is indefinite because it is not clear as to which is the claim that claim 3 depends from.

In claim 4, the expression "wherein the reinforced concrete beams in the form of a trough" is not clear because the concrete beams of the present invention are not in the form of a trough as claimed. Further, it is not clear as to whether the "lower side", recited in the last line of claim 4, refers to the lower side of trough, or the lower side of a beam.

In claim 12, line 6, it is not clear as to which structure that the expression "by means of which" refer to.

In claim 21, lines 3-4, the expression "conventional standard connecting means" is indefinite because it is not clear as to what structures are covered by the instant claimed conventional standard.

In claim 25, lines 2-3, "the rail" lacks antecedent basis.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

8. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Wilson (US 1,118,251).

Willson, Figures 2 and 4, shows a fixed track system having all of the features recited in the instant claims, including a sleeper frame that comprises rigid longitudinally extending beams 14, and a framework constituted by elements 13 and 15 that transversely fixedly interconnecting the beams; reinforced concrete piles 11 appeared in Figure 2 of Wilson as being fixed in the ground; and rails as shown in Figure 2 of Wilson being secured on the frame.

9. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson (US 1,118,251) in view of Kaczmarek (US 6,342,287).

Wilson is applied above.

Regarding the instant claimed mat provided between the rail and the substructure, as recited in instant claim 25, consider the mat shown in Figure 3 of Kaczmarek which is designed for use as claimed. In view of Kaczmarek, it would have been obvious to one skilled in the art to use mats, similar to that taught by Kaczmarek, in between the rail and the substructure of Wilson for damping vibrations, and thus reducing noises.

10. Claims 1-3, 8-11, 14, 17, 21 and 28 (3, 8-11, 14, 17, 21 as best understood) rejected under 35 U.S.C. 103(a) as being unpatentable over Moses (US 3,361,351) in view of Dehuff (US 152,469).

Moses discloses a fixed track system having features similar to that recited in the instant claims, including a sleeper frame that has a pair of beams 16, a rigid frame work formed by tie bars 56. It is noted that the structure of Moses does not include piles for supporting the frame.

Dehuff discloses the use of piles B, which are driven into the ground by a suitable pile-driver. Such method of driven the piles into the ground is readable as nailing down or high-pressure injection.

In view of Dehuff, it would have been obvious to one skilled in the art to further provide piles, similar to that taught by Dehuff, in the ground under the track structure of Moses so as to strengthen the ground support for the track structure.

As to the instant claimed piles being made of reinforced concrete, as recited in instant claim 3, note that as a matter of design choice, it would have been obvious to one skilled in the art to select a well known material, such as steel or concrete as being the well known material (Official Notice is taken), to form the piles of Moses, as modified, so as to achieve the expected advantages of such material, i.e. in term of costs, strength, durability and/or availability.

Regarding the instant claimed structure connecting the beams being steel structures, as recited in instant claim 8, consider tie bars 56 of Moses, and it would have been obvious to one skilled in the art to form such tie bars from a well known material, such as steel as being the well known material (Official Notice is taken), so as to achieved the expected advantages thereof, such as strong and inexpensive.

Regarding the instant claimed body of cast concrete between the beams, as recited in instant claims 9-11, consider concrete body F of Moses that includes bars 56 embedded therein, and the concrete forming concrete body F is readable as a high-early-strength concrete.

Regarding the instant claimed noise absorbing concrete layer, as recited in instant claim 14, note that the top portion of the concrete body F of Moses is readable as a noise-absorbing concrete layer because it would have at least a certain minimal capability of absorbing noises.

Regarding the instant claimed drainage system integrated into the beams for conducting water away from the upper surface of the concrete body, as recited in instant claim 17, consider Figure 1 of Hanig; wherein, the top surface of the concrete below rail 12 is recessed from the top surface of the portion of concrete body 10 located between rails 12. In view of Hanig, it would have been obvious to one skilled in the art to form the top surface of concrete beams 16 of Moses with a recess surface below the top surface of filler F, in a manner similar to that shown in Figure 1 of Hanig, so as to facilitate drainage away from the top surface of the concrete body F.

Regarding claim 21, consider the connecting means for securing rails 30 of Moses to beams 16. As to the instant claimed laterally displaceable mounting, as recited in instant claim 21, note that beams 16 of Moses are laterally adjustable by adjusting tie bars 56; therefore, through the use of adjusting tie bars 56, the rails anchored in the fasteners of Moses are readable as being laterally displaceable along with the beams.

Regarding the instant claimed method steps recited in instant claim 28, note that the method of constructing the track structure of Moses, as modified, obviously requires the method steps as claimed.

11. Claims 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 28 above, and further in view of Lamb (US 1,116,446).

Regarding instant claim steel support in the piles for securing to the sleeper frame, as recited in instant claim 29, consider Figure 4 of Lamb, wherein pile 9 is secured with the track structure by securing bolts 24 extending through the upper parts of piles 9. In view of Lamb, it would have been obvious to one skilled in the art to further configure the piles of Moses, as modified, to include supports in the form of securing bolts, similar to that taught by Lamb, extending through the upper parts of the piles for securing the piles with the track structure or sleeper frame so as to prevent movements between the track structure and the piles for enhancing safety. As to whether the piles are made from steel or concrete, note that as a matter of design choice, it would have been obvious to one skilled in the art to select a well known material, such as steel or concrete as being the well known material (Official Notice is taken), to form the piles of Moses, as modified, so as to achieve the expected advantages of such material, i.e. in term of costs, strength, durability and/or availability.

12. Claims 22-24 (as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 21 above, and further in view of Lundie (US 1,606,309).

Regarding the instant claimed ribbed plates, as recited in instant claims 22-24, consider ribbed plate 11 of Lundie, and track structure would require a plurality of such ribbed plates. In view of Lundie, it would have been obvious to one skilled in the art to use ribbed plates, similar to that taught by Lundie, in the structure of Moses for

Art Unit: 3617

supporting the rails; wherein, the ribbed plates are prevented from undesired transverse movements by the ribs, and the inclination of the rails is adjustable by using ribbed plates having a selected angle relative the horizontal.

13. Claims 4-5, 13 and 15-16 (as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Moses (US 3,361,351) in view of Dehuff (US 152,469) as applied to claim 3 or 9 above, and further in view of Hanig (US 3,756,507).

Regarding the instant claimed foil under the concrete body, consider the structure of Hanig including foil 13 or 16. In view of Hanig, it would have been obvious to one skilled in the art to improve the stability and seals of the base track structure of Moses by including a base structure covered by a foil, similar to that taught by Hanig.

Regarding the instant claimed slope of the concrete surface for allowing drainage, as recited in instant claim 13, such drainage feature is well known. Note for example, the slopes on the concrete body 10 of Hanig. Therefore, it would have been obvious to one skilled in the art to provide slopes on the upper surface of concrete body F of Moses, in a manner similar to that taught by Hanig, so as to improve drainage.

14. Claims 1-3, 8-14, 17 and 21 (3, 8-14, 17 and 21 as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Snelling (US 964,190) in view of Wilson (US 1,118,251).

Snelling discloses a fixed track for rail traffics, similar to that recited in the instant claims, including a frame structure that is formed by elements E,D,D',F, and carriers A that are also readable as reinforced concrete prefabricated parts or sleepers.

Regarding the instant claimed supporting piles, note that the use of supporting piles for railroad tracks are well known. Note for example, Willson, Figures 2 and 4, shows reinforced concrete piles 11 provided for stabilizing the ground under the track for enhancing supports for the tracks. In view of Wilson, it would have been obvious to one skilled in the art to further provide supporting piles, similar to that taught by Wilson, under the track structure of in the structure of Snelling for strengthening the track supports.

Regarding instant claim 3 (presumably depending from claim 2), note that the method of installing the piles by using high-pressure injection as claimed is not considered to be patentable significant because claim 3 is an apparatus claim, and the method of installing the piles recited therein does not define a structure distinction to define apparatus claim 3 over the prior art structure.

Regarding the instant claimed space between the sleepers being filled with concrete, as recited in instant claims 9-10, note that the filled material C of Snelling may also be concrete, as described in lines 56-57 of Snelling, which is readable as a "high-early-strength casting concrete" as broadly claimed. On the other hand, it would have been obvious to one skilled in the art to use a commercially available high early strength concrete material for filling space C of Snelling so as to create a strong and stable track support structure.

Regarding the instant claimed connecting steel structures, recited in claim 8, and the instant claimed steel insert, as recited in instant claim 11, note connecting rods E,D,D',F of Snelling, and it would have been obvious to one skilled in to use

conventional reinforcement steel rods for forming such connecting rods of Snelling because they are strong and inexpensive.

Regarding claim 12, note that the fastening profiles of prefabricated parts A shown in Figure 1 of Snelling are capable of being used as means for allowing fastening of additional parts as claimed.

Regarding claim 13, consider the top surface of structure C in the space between prefabricated parts A of Snelling.

Regarding the instant claimed noise-absorbing concrete layer, recited in instant claim 14, note that the top layer of concrete body C of Snelling is readable as a noise-absorbing concrete layer as broadly claimed.

Regarding claim 17, consider channel B of Snelling.

Regarding claim 21, consider the connecting means shown in Figure 1 of Snelling that secures rails T to the fastening profiles of prefabricated parts A.

15. Claim 6 (as best understood) is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 3 above, and further in view of Sahlberg (US 1,979,642).

Regarding the instant claimed prefabricated parts being pre-curved to counter loads, as recited in instant claim 6, note that such concept of configuring an elongated load supporting structure with an upward curve to counter loads placed thereon is well known. Note for example, claim 1 of Sahlberg, wherein, the beam is pre-curved to counter loads to be placed thereon. Therefore, it would have been obvious to one

skilled in the art to improve prefabricated parts or beams A of Snelling by curving it, as taught by Sahlberg, so as to counter the loads to be placed thereon.

16. Regarding Applicant's arguments that the corresponding structures of the sleeper frame of Snelling are not preassembled rail beams, note that the rail beams of Snelling are readable as preassembled or prefabricated rail beams because the rail beams are preassembled or prefabricated before the installation of other parts and the filling of material c between the rail beams.

Regarding Applicant's arguments that the instant claimed tie rods of Snelling do not form a rigid frame because they do not prevent parallel motion of the supports relative to each other, note that the frame formed by the tie rods of Snelling are readable as a rigid frame transversely fixedly interconnecting the beams, as broadly recited in instant claim 1 because in the assembled structure, as shown in Figure 1 of Snelling, all parts are fixed relative to one another.

Regarding Applicant's argument that in the present invention, no base plates, foundations and trenches are necessary, note that Applicant's arguments do not directly address the specific limitations of the instant claims; therefore, they are not deemed to be relevant.

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK T. LE whose telephone number is (571)272-6682. The examiner can normally be reached on Mon-Fri, between 8:15-4:45 (Teleworking).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Le/
Primary Examiner
Art Unit 3617

mle
11/10/08